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TECHNOLOGY CENTER 3600

In re Application of
Marcus Clark
Appl. No. 10/733,060
Filed: December 11, 2003
For: SNAP-LOCKING INITIATOR
ASSEMBLIES FOR INFLATOR DEVICES

ON PETITION TO
WITHDRAW FINALITY

This is a decision on Applicant's Petition under 37 CFR 1.81 filed on October 19, 2007 to withdraw the finality of the office action mailed August 20, 2007.

The petition is **DENIED**.

FACTS

The request is based the fact that status of claim 21 in the first office action was unclear. The facts set forth below are set forth as they apply to the issue at hand.

On September 22, 2005 a non-final office action was mailed. The coversheet and the summary of the action indicated claim 21 as being allowable while in the action paragraph 14 indicated claim 21 as being rejected.

Applicant filed a response on December 27, 2005, and completing the response on March 20, 2006. In those responses, claim 21 was treated by applicant as allowable.

In May 2, 2007 a notice of non-responsive amendment was mailed stating that while the "Office Action Summary indicates claim 21 as allowed, paragraph 14 of the Office action provides a clear rejection of the claim".

On May 16, 2007, an interview between the applicant and the examiner confirmed that claim 21 was rejected.

On May 29, 2007 applicant files an amendment which addresses the rejection of claim 21.

On August 20, 2007, the examiner issues a final rejection, finally rejecting a number of claims including claim 21.

ISSUE

The applicant contends that:

- 1.) the non-final office action as a whole did not warrant the detailed action of December 22, 2005 as required by the examiner.
- 2.) applicants reading of the clear language of the Office Action regarding claim 21 was justified and should not hold the actions mistake against the applicant.
- 3.) applicant asserts that the rejection of claim 21 is improper as it does not clearly address all the limitation of claim 21 in a manner to allow applicant to properly respond.

DECISION

Regarding applicant's first point, this issue is Moot since applicant provided a detailed response on May 29, 2007.

Regarding applicant's second point, it is unclear what actions are being held against the applicant. The matter was clarified by an interview prior to applicant filing a response to the rejection of claim 21. Also, the fact that the applicant had to file a second response in light of the clarification of claim 21 does not appear to be solely the fault of the examiner. A clear reading of the detailed office action sets forth a separate paragraphed rejection of claim 21. Applicant had an opportunity to consult the examiner prior to filing any response.

With respect to the third point, a review of the application shows that the various elements of the claim have been claimed and addressed in previous dependent claims, with the exception of the adapter plate, which was addressed by the examiner. Additionally, the examiner responded to applicant's comments regarding the "wherein" statement in the final rejection. Therefore, this is a matter related to the prosecution of the merits claims and cannot be treated by petition. Applicant is suggested to file a pre-appeal request to have the matter of a potential clear error raised by an expanded panel of primary examiners.

The Petition is **DENIED**.

The finality of the August 20, 2007 Office action remains in effect and the case is being forwarded to the examiner of record to treat the After-Final amendment of October 19, 2007.

Any question concerning this decision should be referred to SPE Michael Carone at 571-272-6873.

Don T. Hajec

Donald T. Hajec
Director,
Technology Center 3600

Mjc/snm: 11/9/07

SM